

**RECEIVED IN THE UNITED STATES PATENT  
AND TRADEMARK OFFICE**

**Paper:** Petition under 37 C.F.R. § 1.378(b) For Acceptance of Delayed Payment of Maintenance Fee in Expired Patent to Reinstate Patent Transmittal Letter (w/Express Mail Service); Petition under 37 C.F.R. § 1.378(b) For Acceptance of Delayed Payment of Maintenance Fee in Expired Patent to Reinstate Patent; Executed Declaration of Declaration of Rolin F. Barrett, Jr.; Executed Declaration of Edna Walsh; Executed Declaration of John G. Mills, III; Executed Declaration of Larry L. Coats; Petition Fee under 37 C.F.R. § 1.17(f), (g) and (h) Transmittal (in duplicate); Authorization to Charge Fee of \$130.00 to Deposit Account No. 50-1275; Return Postcard all via Express Mail No. EV146 601 295US

**Applicant(s):** Rolin F. Barrett, Jr.

**Title:** GUIDED BULLET

**U.S Patent No.:** 5,788,178

**Serial No.:** 08/888,425

**Docket No.:** RBAR0001-100

**Date Sent:** July 8, 2005

**Issued:** August 4, 1998

**Filed:** July 7, 1997

Michael A. Patané/Hope Graves

EV146601295US

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**Applicant(s):** Rolin F. Barrett, Jr.

**Title:** GUIDED BULLET

**U.S Patent No.:** 5,788,178

**Serial No.:** 08/888,425

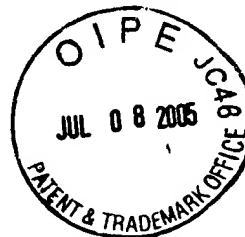
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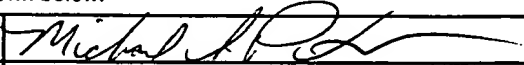
Michael A. Patané/Hope Graves



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<b>TRANSMITTAL FORM</b>  (to be used for all correspondence after initial filing)		Patent Number	5,788,178
		Issue Date	August 4, 1998
		Application Number	08/888,425
		Filing Date	July 7, 1997
		First Named Inventor	Rolin F. Barrett, Jr.
Total Number of Papers in This Submission	Six	Attorney Docket Number	RBAR0001-100

ENCLOSURES (check all that apply)			
<input checked="" type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment / Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Reply to Missing Parts/ Incomplete Application <input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input checked="" type="checkbox"/> Petition under 37 C.F.R. § 1.378(b) For Acceptance of Delayed Payment of Maintenance Fee in Expired Patent to Reinstate Patent <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____ <input type="checkbox"/> Landscape Table on CD	<input type="checkbox"/> After Allowance Communication to TC <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): - Declaration of Rolin F. Barrett, Jr. - Declaration of Edna Walsh - Declaration of John G. Mills, III - Declaration of Larry L. Coats	<b>Remarks</b> EXPRESS MAIL LABEL NO.: EV146 601 295US DATE OF DEPOSIT: July 8, 2005
SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT			
Firm	Cozen O'Connor, P.C.		
Signature			
Printed Name	Michael A. Patané		
Date	July 8, 2005	Reg. No.	42,982

CERTIFICATE OF TRANSMISSION/MAILING			
I hereby certify that this correspondence is being deposited, via Express Mail Service, with the United States Postal Service with sufficient postage in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below.			
Signature			
Typed or printed name	Michael A. Patané	Date	July 8, 2005

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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**PETITION FEE**  
**Under 37 CFR 1.17(f), (g) & (h)**  
**TRANSMITTAL**  
 (Fees are subject to annual revision)

Send completed form to: Commissioner for Patents  
 P.O. Box 1450, Alexandria, VA 22313-1450

Patent Number	5,788,178
Issue Date	August 4, 1998
Application Number	08/888,425
Filing Date	July 7, 1997
First Named Inventor	Rolin F. Barrett, Jr.
Attorney Docket Number	RBAR0001-100

Enclosed is a paper filed under 37 CFR §1.378(b) that requires a processing fee (37 CFR 1.17(f), (g), or (h)). Payment of \$130.00 is enclosed.

This form should be included with the above-mentioned paper and faxed or mailed to the Office using the appropriate Mail Stop, (e.g., Mail Stop Petition), if applicable. For transmittal of petition fees under 37 CFR 1.17(i) see form PTO/SB/17i.

**Payment of Fees** (small entity amounts are NOT available for the petition fees)

- ☒ The Commissioner is hereby authorized to charge the following fees to Deposit Account No. 50-1275 :  
☒ processing fee under 37 CFR 1.17(f), (g) or (h) ☒ any deficiency of fees and credit of any overpayments

Enclose a duplicative copy of this form for fee processing.

- ☐ Check in the amount of \$ \_\_\_\_\_ is enclosed.  
☐ Payment by credit card (Form PTO-2038 or equivalent enclosed). Do not provide credit card information on this form.

**Petition Fees under 37 CFR 1.17(f): Fee \$400 Fee Code 1462**

For petitions filed under:

- § 1.53(e) - to accord a filing date.  
 § 1.57(a) - to accord a filing date.  
 § 1.182 - for decision on a question not specifically provided for.  
 § 1.183 - to suspend the rules.  
 § 1.378(e) - for reconsideration of decision on petition refusing to accept delayed payment of maintenance fee in an expired patent.  
 § 1.741(b) - to accord a filing date to an application under § 1.740 for extension of a patent term.

**Petition Fees under 37 CFR 1.17(g): Fee \$200 Fee Code 1463**

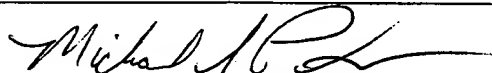
For petitions filed under:

- § 1.12 - for access to an assignment record.  
 § 1.14 - for access to an application.  
 § 1.47 - for filing by other than all the inventors or a person not the inventor.  
 § 1.59 - for expungement of information.  
 § 1.103(a) - to suspend action in an application.  
 § 1.136(b) - for review of a request for extension of time when the provisions of section 1.136(a) are not available.  
 § 1.295 - for review of refusal to publish a statutory invention registration.  
 § 1.296 - to withdraw a request for publication of a statutory invention registration filed on or after the date the notice of intent to publish issued.  
 § 1.377 - for review of decision refusing to accept and record payment of a maintenance fee filed prior to expiration of a patent.  
 § 1.550(c) - for patent owner requests for extension of time in *ex parte* reexamination proceedings.  
 § 1.956 - for patent owner requests for extension of time in *inter partes* reexamination proceedings.  
 § 6.12 - for expedited handling of a foreign filing license.  
 § 8.16 - for changing the scope of a license.  
 § 5.25 - for retroactive license.

**Petition Fees under 37 CFR 1.17(h): Fee \$130 Fee Code 1464**

For petitions filed under:

- § 1.19(g) - to request documents in a form other than that provided in this part.  
 § 1.84 - for accepting color drawings or photographs.  
 § 1.91 - for entry of a model or exhibit.  
 § 1.102(d) - to make an application special.  
 § 1.138(c) - to expressly abandon an application to avoid publication.  
 § 1.313 - to withdraw an application from issue.  
 § 1.314 - to defer issuance of a patent.



Signature

Michael A. Patané

Typed or printed name

July 8, 2005

Date

42,982

Registration No., if applicable

This collection of information is required by 37 CFR 1.17. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 5 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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*Ser. No. 08/888,425*  
*Docket No. RBAR0001-100*

*PETITION UNDER*  
*37 C.F.R. § 1.378(b)*

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

**In re US Pat. No.: 5,788,178**

**Serial No.: 08/888,425**

**Issued: August 4, 1998**

**Filed: July 7, 1997**

**Patentee: Rolin F. Barrett, Jr.**

**Docket No.: RBAR0001-100**

**For: GUIDED BULLET**

**MAIL STOP PETITION**

**Commissioner for Patents**

**P.O. Box 1450**

**Alexandria, VA 22313-1450**

**VIA EXPRESS MAIL LABEL NO: EV146 601 295US**

**DATE SENT: July 8, 2005**

**PETITION UNDER 37 C.F.R. § 1.378(b)**

**FOR ACCEPTANCE OF DELAYED PAYMENT OF MAINTENANCE FEE IN  
EXPIRED PATENT TO REINSTATE PATENT**

**SIR:**

Petitioner hereby respectfully requests reinstatement of U.S. Patent No. 5,788,178 entitled GUIDED BULLET, issued to Rolin F. BARRETT, Jr. on August 4, 1998. U.S. Patent No. 5,788,178 (the 178 Patent) was abandoned on August 5, 2002 for failure to pay the fourth year maintenance fee. Because more than twenty-four months have passed since the expiration, this petition is being filed under 37 C.F.R. § 1.378(b). (A copy of this Petition and its attachments is also being filed, for the record, in U.S. Serial No. 09/436,387, the reissue case based on the 178 Patent.)

Petitioner respectfully requests reinstatement of the 178 Patent for unavoidably delayed payment of the fourth year maintenance fee. This petition is grantable under 37 C.F.R. § 1.378(b) and, pursuant to MPEP § 2590 includes:

- A) the maintenance fee under 37 C.F.R. § 1.20(e) (\$440 in 2002, currently \$450.00 for small entities);
- B) the Petition fee under 37 C.F.R. § 1.20(i)(1) (currently \$700.00 regardless of entity size); and

C) a showing of unavoidable delay.

No other fee is due, however, the Commissioner is hereby authorized to charge deposit account 50-1275 for these and any other fees, including the surcharge fee under 37 C.F.R. § 1.20(h), necessary to grant this Petition and reinstate the 178 Patent.

Applicants respectfully assert that the delay in paying the maintenance fee was unavoidable. In support of this assertion, attached hereto are the Declarations of the inventor/patentee, Rolin F. Barrett, Jr.; John G. Mills III and Edna Walsh of the Mills Law Firm; and Larry L. Coats of Coats & Bennett.

This petition is being filed more than twenty-four months after the expiration of the surcharge period for payment of the fourth year maintenance fee. Accordingly, the unavoidable standard of 37 C.F.R. § 1.378(b) applies. MPEP § 2590 indicates that with respect to late payment of maintenance fees, the “unavoidable delay standard is considered under the same standard for reviving an abandoned application under 35 U.S.C. § 133.” In *In re Katrapat AG*, the Commissioner explained the meaning of “unavoidable”:

[The word "unavoidable"] is applicable to ordinary human affairs, and requires no more or greater care than is generally used and observed by prudent and careful men in relation to their most important business. It permits them in the exercise of this care to rely upon the ordinary and trustworthy agencies of mail and telegraph, worthy and reliable employees, and such other means and instrumentalities as are usually employed in such important business. If unexpectedly, or through the unforeseen fault or imperfection of these agencies and instrumentalities, there occurs a failure, it may properly be said to be unavoidable, all other conditions of promptness in its rectification being present.

(*In re Katrapat, AG*, 6 USPQ2d 1863 (ComrPats, 1988, *citations omitted*.) Thus, the Office’s position is clear that such human error is properly deemed to be unavoidable.

Here, the failure to timely pay the fourth year maintenance fee was due to human error on the part of the Mills firm, an otherwise worthy and reliable firm.

As evidenced by the declarations of Patentee and the Mills firm, the 178 Patent was filed and successfully prosecuted to issuance on August 4, 1998 by John G. Mills of the Mills Law firm. The issued patent was promptly reported to patentee, Mr. Rolin F. Barrett, Jr., on August 13, 1998. A month later, at the direction of patentee, the Mills firm sent a letter with a copy of the 178 Patent to Dr. Ronald M. Barrett, Assistant Professor of Aerospace Engineering at Auburn University, putting Dr. Ronald M. Barrett, and Auburn University, on notice of the 178 Patent. Dr. Ronald M. Barrett acknowledged this letter in September. Thus, the name and address of Dr. Ronald M. Barrett were introduced into the file concerning the 178 Patent at the Mills firm.

As can be seen in the Mills Declaration and attachments, Mr. Mills, the name partner of the firm, is a well-respected patent attorney, lecturer, adjunct professor and teacher. Thus, Patentee's reliance on Mr. Mills and his firm was prudent.

Having the benefit of hindsight, we now see that the maintenance fee was first due August 6, 2001, and payable, with a surcharge until August 5, 2002, and that non-payment was the result of inadvertent error. As evidenced by the Mills and Walsh Declarations, and attached documents, maintenance fee reminder letters were addressed to Dr. Ronald M. Barrett rather than Mr. Rolin F. Barrett, Jr.<sup>1</sup> On March 12, 2002, the firm sent a reminder concerning the fourth year maintenance fee. Unfortunately, the letter was addressed to Ronald Barrett at Auburn University. As stated in the Mills and Walsh Declarations, Ronald Barrett did not return the letter, nor did he contact the Mills Firm concerning the letter. Having not received any response, the Mills firm sent a second reminder on July 16, 2002, by certified mail. Unfortunately, but consistent with the address of the prior letter, the reminder was sent again to Ronald Barrett. Once again, Ronald Barrett did not return the letter, nor did he contact the Mills firm concerning the letter. Finally, on October 14, 2002, the Mills firm wrote a letter indicating the abandonment of the 178 Patent. Not having any indication that the prior letters had been incorrectly addressed, the Mills firm again directed the letter to Ronald Barrett. Again, the letter was not returned by

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<sup>1</sup> The common last names contributed to the confusion. In addition to a last name in common, another factor potentially adding to the confusion between Mr. Rolin F. Barrett, Jr. and Dr. Ronald M. Barrett is that Mr. Rolin F. Barrett's father is Dr. Rolin F. Barrett, with whom Mr. Rolin F. Barrett, Jr. works at the engineering firm of Barrett Engineering, and with whom the Mills firm apparently had some familiarity. Thus, there were *two* Dr. Barretts related, at least tangentially, to this case.

Ronald Barrett, nor did he contact the Mills Firm concerning the letter. The Mills Firm closed their file thinking the patent was abandoned and no further communication came from the Mills Firm, until the recent inquiries.

Thus, it is clear from the attached Declarations that the Patentee, in the course of his ordinary human affairs, exercised the care that is generally used and observed by prudent and careful men in relation to their most important business in relying on the Mills firm for tracking and paying the maintenance fee. The Mills Firm in turn, relied upon the ordinary and trustworthy agencies of the mail and worthy and reliable employees, and such other means and instrumentalities as are usually employed in such important business, and that had been used in their normal practice. Even so, unexpectedly, through the unforeseen fault or imperfection of these agencies and instrumentalities, a failure occurred in that Dr. Ronald M. Barrett's name and address were used rather than Mr. Rolin F. Barrett, Jr. Under these circumstances, petitioner respectfully asserts that, such error is properly said to be unavoidable. As such, the conditions of 37 C.F.R. § 1.378(b) have been met and this Petition should be granted, thereby reinstating the 178 Patent.

Although Petitioner firmly believes the discussion above, in light of the referenced Declarations, is sufficient for purposes of this petition, in an abundance of caution and in satisfaction of our duty of candor with the Office, Petitioner also provides some additional information which we do not believe should alter the outcome of the Petition, but nonetheless could be deemed relevant.

Less than two years after the issuance of the 178 Patent, patentee, Rolin F. Barrett, Jr., hired Larry L. Coats, of the firm of Coats & Bennett (then Rhode, Coats & Bennett) to file a reissue application based on the 178 Patent. Patentee had no reason to question the competency of Mr. Coats or his firm and believed they could be helpful in securing broader patent protection. Since then, the reissue application has been examined, and even sent to the Board and back again, before allowance was indicated (only by telephone) this January, 2005. At no time, prior to late January or early February 2005, during that nearly five year examination period did the Office, in the reissue application, indicate that the parent 178 Patent had expired. As set forth in



his Declaration, Rolin Barrett, as reissue applicant and 178 Patentee, was previously unaware of the expiration of the 178 Patent.

Patentee has spent more than ten thousand dollars in costs and attorney's fees to prepare and prosecute the reissue application. The fourth year maintenance fee is almost negligible by comparison. Obviously, had the letters from the Mills Firm reached Patentee, he would have authorized payment of the maintenance fee, as evidenced by the continued prosecution and perseverance in pursuing the reissue application through the lengthy and costly reissue process which was further complicated by an appeal to the Board and subsequent remand.

As pointed out in their Declaration, the Coats Firm did not docket or track anything having to do with the parent issued patent. According to the Coats Declaration, the Coats firm was concerned only with the filing and prosecution of the reissue case, which was treated as a separate application with a new PTO serial number, distinct from the parent 178 Patent, and new attorney docket number. As stated in the Coats Declaration, it was their belief that there was no need for the Coats Firm to be involved in anything other than the reissue application. This position is supported by the fact that the Mills Firm did, in fact, assume responsibility for tracking the maintenance fee, as evidenced by their letters seeking instructions regarding payment of the maintenance fee. Furthermore, as mentioned above, and in the Coats Declaration, it was not until after an indication of allowance in late January or early February of this year that the Coats firm was informed of the abandonment of the 178 Patent. Upon learning of the abandonment, the Coats firm informed Patentee and began investigating the circumstances of the abandonment.

Shortly thereafter, Patentee engaged current counsel to independently evaluate the facts and to prepare and file this petition. Current counsel has diligently secured the files from the prior firm and investigated the facts surrounding non-payment of the maintenance fee in preparation of this Petition and the associated Declarations.

Petitioner respectfully submits that all requirements of 37 C.F.R. § 1.378(b) have been met and that there is clear evidence that the failure to pay the fourth-year maintenance fee was unavoidable. Accordingly, acceptance of late payment of the fourth-year maintenance fee and reinstatement of the 178 Patent is respectfully requested.

*Ser. No. 08/888,425*  
*Docket No. RBAR0001-100*

*PETITION UNDER*  
*37 C.F.R. § 1.378(b)*

The Commissioner is respectfully requested to contact the attorney below if he believes it will facilitate the granting of this petition.

Respectfully submitted,

COZEN O'CONNOR, P.C.

A handwritten signature in black ink, appearing to read "Michael A. Patané", with a stylized flourish at the end.

by: Michael A. Patané  
Reg. No. 42,982

Date: July 8, 2005

1900 Market Street, 5<sup>th</sup> Floor  
Philadelphia, PA 19103-3508  
215-665-6966 – Telephone  
215-701-2080 - Facsimile

*Ser. No. 08/888,425*  
*Docket No. RBAR0001-100*

*PETITION UNDER*  
*37 C.F.R. § 1.378(b)*

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

**In re US Pat. No.: 5,788,178**

**Serial No.: 08/888,425**

**Issued: August 4, 1998**

**Filed: July 7, 1997**

**Patentee: Rolin F. Barrett, Jr.**

**Docket No.: RBAR0001-100**

**For: GUIDED BULLET**

**MAIL STOP PETITION**  
**Commissioner for Patents**  
**P.O. Box 1450**  
**Alexandria, VA 22313-1450**

**Declaration of Rolin F. Barrett, Jr.**

I, Rolin F. Barrett, Jr., hereby declare that:

1. I currently reside at 5132 Killarney Hope Dr., Raleigh, NC 27613.
2. I am the sole inventor, owner, and Patentee of U.S. Patent No. 5,788,178, entitled GUIDED BULLET issued in my name on August 4, 1998 (the 178 Patent).
3. I have read the accompanying Petition and Declarations of John G. Mills III, Edna Walsh and Larry L. Coats, and have learned that timely maintenance fee reminders were inadvertently sent to Dr. Ronald M. Barrett at Auburn University rather than to me, resulting in the unintentional and unavoidable abandonment of my 178 Patent.
4. At the time the 178 Patent issued, my residence address was 4001 George V. Strong Wynd, Raleigh, NC, as stated on the face page of the patent. However, in November 2000, I moved to my current address listed above. (The prior address was and remains my parents' home, so any mail directed to that address would have been forwarded to me.)
5. The 178 Patent issued from a continuation-in-part application (888,425) based on a non-provisional application (660,700) based on the provisional application (60/002,608), each

of which was prepared and prosecuted by Mr. John G. Mills of the Mills Law Firm of Wake Forest, North Carolina.

6. In 1998 shortly after the issuance of the 178 Patent, the Mills Law Firm, on my instruction, sent a letter with a copy of the issued 178 Patent to Dr. Ronald M. Barrett at Auburn University, to put Dr. Ronald M. Barrett on notice of the 178 Patent.
7. Dr. Ronald M. Barrett responded to the letter with nearly a full page reply.
8. Unbeknownst to the Mills Law Firm, I hired the firm of Rhodes, Coats & Bennett (now Coats & Bennett) to file a reissue application (09/436,387) based on the 178 Patent, which they filed on November 4, 1999.
9. The prosecution of the reissue application has been long, over five years, and involved an Appeal to the Board which ultimately resulted in a remand to the Examiner indicating the case should be handled immediately. Considerable time, money, and effort has been put into securing the allowance of the reissue application.
10. In late January or early February 2005, I learned for the first time, that the 178 Patent had expired for failure to pay the 4<sup>th</sup> year maintenance fee, when, just days after learning the reissue application was allowable, the Patent Office contacted Coats & Bennett to inform them of the expiration of the parent, 178 Patent.
11. At no time prior to late January or early February 2005 did I receive any indication from the Patent Office, the Mills Law Firm, or Coats & Bennett that my 178 Patent had expired.
12. Since then, I have worked diligently with Coats & Bennett and the Mills Law Firm to determine the facts surrounding the failure to pay the 4<sup>th</sup> year maintenance fee.
13. I have now hired current counsel, Michael A. Patané of Cozen O'Connor to independently evaluate the situation and prepare the required documents for the accompanying petition. We have again worked diligently to uncover all the facts and to prepare the accompanying Petition and Declarations.

14. I declare further that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further, that the statements are made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code.

June 29, 2005

Rol. F. Barrett, Jr.  
Rolin F. Barrett, Jr.

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

**In re US Pat. No.:** 5,788,178

**Serial No.:** 08/888,425

**Issued:** August 4, 1998

**Filed:** July 7, 1997

**Patentee:** Rolin F. Barrett, Jr.

**Docket No.:** RBAR0001-100

**For: GUIDED BULLET**

**MAIL STOP PETITION**  
**Commissioner for Patents**  
**P.O. Box 1450**  
**Alexandria, VA 22313-1450**

**Declaration of Edna Walsh**

I, Edna Walsh, hereby declare that:

1. I am a citizen of the United States residing at 117 Remington Woods Dr.  
Wake Forest, NC 27587.
2. I have been employed by the Mills Law Firm since 1996. As such, I am familiar with office procedures, the computerized docketing system, and in particular the maintenance fee reminder system.
3. Our firm has, since about September 2001, maintained a maintenance fee reminder system which is separate from our computerized docketing system that manages our patent and trademark prosecution docket. The system has been updated over time, but essentially includes a manual tickler system in binders with all patents filed by their respective due dates for each maintenance fee. An Excel spreadsheet is maintained to monitor the due dates and reminder stages at a glance. The prosecution file is sent to storage shortly after issue and is not accessed for maintenance fee reminders. The binder system provides the necessary information for preparing and mailing maintenance fee reminders.
4. Prior to September 2001, patents were maintained by the year of issue, with responsibility for pulling the patents and contacting clients being placed in several

employees hands (of whom, only I remain at the firm). The usual practice involved contacting clients at the opening of the payment window, at the beginning of the surcharge window, approaching the close of the surcharge period, and finally upon abandonment of the case, if necessary.

5. During the period when our client, Rolin F. Barrett, Jr., would first have been reminded (July/August 2001) there was a transition between the original system which involved several part-time employees and the new system which provided for the centralized reminder system.
1. Apparently during the transition, our client was not notified regarding the opening of the payment window. However, upon receiving the Patent Office reminder, I prepared the surcharge reminder letter and sent it on March 12, 2002 using the last correspondence sent for the address information. See Exhibit 1.<sup>1</sup>
2. At the time, I did not recognize or appreciate the fact that there were two Barrett's in the case and directed the mail to Dr. Ronald M. Barrett ("Ronald Barrett") at Auburn University, which was the last correspondence address used. Because of the great similarities in the names – Ronald Barrett and Rolin Barrett – the error went undetected. Subsequent reminders were based on the first and perpetuated the error.
3. We did not receive a response from Ronald Barrett to our March 12, 2002 maintenance fee reminder. He did not call our firm, nor did he write our firm or return the March 12, 2002 letter. For whatever reason, Ronald Barrett chose not to let us know that we had sent the 4<sup>th</sup> year maintenance fee reminder to the wrong person.
4. Routinely, we follow up with our clients when we do not receive response from the first maintenance fee reminder. We did so in this case. On July 16, 2002, as the close of the


---

<sup>1</sup> The copy of the letter in Exhibit 1 is an unsigned copy. We are a small firm and, on occasion, suffer from unreliable copiers and resort to printing additional unsigned file copies on regular paper or occasionally on firm letterhead when our copier is not operating properly. This declaration, like our file, contains both signed and unsigned copies of letters, depending on copier functionality. Unfortunately, this was a necessary and normal procedure at the time.

payment window approached, we sent, by certified mail, a second notice concerning the 4<sup>th</sup> year maintenance fee. See Exhibit 5.

5. Because the second reminder is based on the first reminder, we again sent the second reminder to Ronald Barrett.
6. As noted above, we sent the second reminder via certified mail. Attached as Exhibit 6 is a copy of the signed receipt for the July 16, 2002 certified letter. Ronald Barrett never contacted the firm to tell us that he received the maintenance fee reminder. Like before, he did not respond in any way.
7. Finally, we received a notice from the Patent Office indicating that the 178 Patent had expired. As we routinely do, we prepared a third notice, indicating that the 178 Patent had expired for failure to pay the maintenance fees. Again, we sent the notice concerning the expiration of the 178 Patent to Ronald Barrett. See Exhibit 7.
8. Like the two prior times, Ronald Barrett did not call or write us to tell us that he had received the letter in error. Throughout this entire process, we received no communications from Ronald Barrett.
9. Having not received any instructions to pay the maintenance fee or any indication that our letters had not reached our client, we closed our file and had not heard anything more about it until recently.
10. I declare further that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further, that the statements are made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code.

6/27/2005

  
Edna Walsh



March 12, 2002

Dr. Ronald M. Barrett, Ass't Prof. Aerospace Eng.  
Auburn University, Department of Aerospace Eng.  
211 Aerospace Engineering Building  
Auburn University, Alabama 36849-5338

Re: Fourth Year Maintenance Fee  
U.S. Patent No. 5,788,178  
For: GUIDED BULLET

Dear Dr. Barrett:

The 4<sup>th</sup> year Maintenance Fee, as reflected on the enclosed Memorandum Statement is now due and payable for your above indicated patent to allow the same to remain in force for four more years.

The fee must be mailed to the U.S. Patent and Trademark Office on or before August 4, 2002 or the Patent will **EXPIRE**.

As always, should there be questions, please feel free to give us a call.

With kindest regards, I remain

Sincerely,

MILLS LAW FIRM PLLC

John G. Mills

JGM:erw  
c-3360-2

EXHIBIT 1

**CARY OFFICE**  
POST OFFICE BOX 5886  
CARY, NC 27512  
TEL 919-380-9500  
FAX 919-380-9821  
mphilips@millsplaw.com

**MILLS LAW FIRM, PLLC**  
PATENT LAWYERS  
822 S WHITE STREET, SUITE 100  
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**EASTERN OFFICE**  
235 COMMERCE STREET  
GREENVILLE, NC 27658  
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FAX 252-413-0445  
psachijen@millsplaw.com

July 16, 2002

Dr. Ronald M. Barrett, Ass't Prof. Aerospace Eng.  
Auburn University, Department of Aerospace Eng.  
211 Aerospace Engineering Building  
Auburn University, Alabama 36849-5338

Re: Fourth Year Maintenance Fee  
U.S. Patent No. 5,788,178  
For: GUIDED BULLET

**CERTIFIED MAIL**

Dear Dr. Barrett:

The 4<sup>th</sup> year Maintenance Fee as reflected on the enclosed Memorandum Statement is now due and payable for your above indicated patent to allow the same to remain in force for four more years.

The fee must be mailed to the U.S. Patent and Trademark Office on or before August 4, 2002 or the *Patent will EXPIRE*.

As always, should there be questions, please feel free to give us a call.

With kindest regards, I remain

Sincerely,

**MILLS LAW FIRM PLLC**

John G. Mills

JGM:erw  
c-3360-2

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[www.millsplaw.com](http://www.millsplaw.com)

EXHIBIT 2

**CARY OFFICE**  
POST OFFICE BOX 5886  
CARY, NC 27512  
TEL 919-380-9500  
FAX 919-380-9521  
mphillips@millspotentiallaw.com

**MILLS LAW FIRM, PLLC**  
PATENT LAWYERS  
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POST OFFICE BOX 1088  
WAKE FOREST, NC 27588-1088  
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jmills@millspotentiallaw.com

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236 COMMERCE STREET  
GREENVILLE, NC 27858  
TEL 252-413-0475  
FAX 252-413-0445  
psachjen@millspotentiallaw.com

October 14, 2002

Dr. Ronald M. Barrett, Ass't Prof. Aerospace Eng.  
Auburn University, Department of Aerospace Eng.  
211 Aerospace Engineering Building  
Auburn University, Alabama 36849-5338

Re: NOTICE OF PATENT EXPIRATION  
For: GUIDED BULLET  
Patent No: 5,788,178

Dear Dr. Barrett:

We are in receipt of a Notice of Patent Expiration, a copy of which is enclosed for your records.

Should there be questions concerning this matter or if you would like to refile the case, please feel free to give me a call relative thereto.

With kindest regards, I remain

Sincerely,

MILLS LAW FIRM PLLC

John G. Mills

JGM:erw  
Enclosure  
c-3360-2

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REGISTERED PATENT ATTORNEYS • UNITED STATES AND INTERNATIONAL PRACTICE  
[www.millspotentiallaw.com](http://www.millspotentiallaw.com)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

**In re US Pat. No.:** 5,788,178

**Serial No.:** 08/888,425

**Issued:** August 4, 1998

**Filed:** July 7, 1997

**Patentee:** Rolin F. Barrett, Jr.

**Docket No.:** RBAR0001-100

**For:** GUIDED BULLET

**MAIL STOP PETITION**  
**Commissioner for Patents**  
**P.O. Box 1450**  
**Alexandria, VA 22313-1450**

**Declaration of John G. Mills, III**

I, John G. Mills, III, hereby declare that:

1. I am a (now retired) principal in Mills Law Firm, PLLC located in Wake Forest, North Carolina 27588-0587. Our firm's practice is, and always has been, limited to intellectual property matters.
2. I practiced patent law for over forty years and taught intellectual property courses at North Carolina State University's School of Engineering for 32 years, as well as at Campbell University's Norman J. Wiggins School of Law. I have also frequently lectured before university, civic, scientific, and professional groups.
3. Our firm prepared and filed a number of patent applications for Mr. Rolin F. Barrett, Jr. for an invention entitled "Guided Bullet." This included a provisional application, application no. 60/002,608 filed June 8, 1995, and two non-provisional applications, serial no. 08/660,700 filed June 5, 1996 and serial no. 08/888,425 filed July 7, 1997. Application serial no. 08/888,425 issued into U.S. Patent No. 5,788,178 (the 178 Patent) on August 4, 1998.
4. Prior to issuance of the 178 Patent, our client, Mr. Rolin F. Barrett, Jr., had known Dr. Ronald M. Barrett ("Ronald Barrett") as Associate professor of Aerospace Engineering at

Auburn University. Our client became concerned when he learned that Ronald Barrett was conducting research in the area of guided bullets and wanted to put Ronald Barrett on notice of the 178 Patent. Our client asked me to write Ronald Barrett to place him on notice of the 178 Patent. On September 14, 1998, I wrote a certified letter to Ronald Barrett at Auburn University and enclosed a copy of the 178 Patent. A copy of this September 14, 1998 letter is attached as Exhibit 1.

5. Ronald Barrett received my letter and replied on September 22, 1998. A copy of the September 22, 1998 letter from Ronald Barrett is attached as Exhibit 2.
6. Our firm has, since about September 2001, maintained a maintenance fee reminder system which is separate from our computerized docketing system that manages our patent and trademark prosecution docket. The system has been updated over time, but essentially includes a manual tickler system in binders with all patents filed by their respective due dates for each maintenance fee. An Excel spreadsheet is maintained to monitor the due dates and reminder stages at a glance. The prosecution file is sent to storage shortly after issue and is not accessed for maintenance fee reminders. The binder system provides the necessary information for issuing maintenance fee reminders.
7. Prior to September 2001, patents were maintained by the year of issue, with responsibility for pulling the patents and contacting clients being placed in several employees hands (of whom, only Mrs. Walsh remains). The usual practice involved contacting clients at the opening of the payment window, at the beginning of the surcharge window, approaching the close of the surcharge period, and finally upon abandonment of the case, if necessary.
8. During the period when our client would first have been reminded (July/August 2001) there was a transition between the original system which involved several part-time employees and the new system which provided for the centralized reminder system.
9. Apparently during the transition, our client was not notified regarding the opening of the payment window. However, upon receiving the USPTO reminder, Mrs. Walsh prepared

the surcharge reminder letter using the last correspondence sent. See Exhibit 3.<sup>1</sup> She failed to appreciate that there were two Barrett's in the case and directed the mail to Ronald Barrett at Auburn University since that was the last correspondence in the file. Because of the great similarities in the names – Ronald Barrett and Rolin Barrett – the error went undetected. Subsequent reminders were based on the first and perpetuated the error.

10. Mrs. Walsh was, and continues to be<sup>2</sup>, a trusted member of our staff, having been employed by the firm since 1996. In fact, Mrs. Walsh was key in recognizing the advantages of a central reminder system and in its implementation.
11. We did not receive a response from Ronald Barrett to our March 12, 2002 maintenance fee reminder. He did not call our firm, nor did he write our firm or return the March 12, 2002 letter. For whatever reason, Ronald Barrett chose not to let us know that we had sent the 4<sup>th</sup> year maintenance fee reminder to the wrong person.
12. Routinely, we follow up with our clients when we do not receive response from the first maintenance fee reminder. We did so in this case. On July 16, 2002, we sent, by certified mail, a second notice concerning the 4<sup>th</sup> year maintenance fee. See Exhibit 4.
13. Because the second reminder is based on the first reminder, we again sent the second reminder to Ronald Barrett.
14. As noted above, we sent the second reminder via certified mail. Attached as Exhibit 5 is a copy of the signed receipt for the July 16, 2002 certified letter. Ronald Barrett never contacted me or my firm to tell us that he received the maintenance fee reminder. Like before, he did not respond in any way.

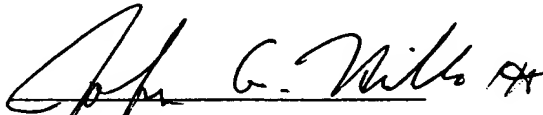
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<sup>1</sup> The copy of the letter in Exhibit 3 is an unsigned copy. We are a small firm and, on occasion, suffer from unreliable copiers and resort to printing additional unsigned file copies on regular paper or occasionally on firm letterhead when our copier is not operating properly. This declaration, like our file, contains both signed and unsigned copies of letters, depending on copier functionality. Unfortunately, this was a necessary and normal procedure at the time.

<sup>2</sup> In fact, Mrs. Walsh is the only current employee of the firm who was employed by the firm at the time of the events in question.

15. Finally, we received a notice from the Patent Office indicating that the 178 Patent had expired. As we routinely do, we prepared a third notice, indicating that the 178 Patent had expired for failure to pay the maintenance fees. Again, we sent the notice concerning the expiration of the 178 Patent to Ronald Barrett. See Exhibit 6.
16. Like the two prior times, Ronald Barrett did not call or write us to tell us that he had received the letter in error. Throughout this entire process, we received no communications from Ronald Barrett.
17. Having not received any instructions to pay the maintenance fee or any indication that our letters had not reached our client, we closed our file and had not heard anything more about it until recently.
18. I declare further that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further, that the statements are made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code.

June 27, 2005

  
John G. Mills, III

**MILLS LAW FIRM PLLC**  
PATENT LAWYERS

**TRIANGLE OFFICE**  
853-H BUSINESS PARK  
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WAKE FOREST, NC 27588-0587  
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**EASTERN GREENE**  
TECHNOLOGY CENTER  
1800 NORTH GREENE STREET  
GREENVILLE, NC 27834  
TEL 252-413-0475  
FAX 252-353-7923  
e-mail: [ecpatent@greenville.com](mailto:ecpatent@greenville.com)

September 14, 1998

Dr. Ronald M. Barrett, Assistant Professor of Aerospace Engineering  
Auburn University, Department of Aerospace Engineering  
211 Aerospace Engineering Building  
Auburn University, Alabama 36849-5338

Re: Notification of Issuance of Patent  
Title: GUIDED BULLET  
United States Patent No. 5,788,178

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Dear Dr. Barrett:

We represent Rolin F. Barrett, Jr. in intellectual property matters. We have recently obtained the above indicated patent for Mr. Barrett, a copy of the same being enclosed for your review. It is our understanding that you have been conducting research in this area and we wanted to put you on notice concerning our client's rights.

Yours very truly,

**MILLS LAW FIRM PLLC**

  
John G. Mills  
Member of the Firm

JGM:erw  
c-3360a

cc: Mr. William B. Muse, President  
Auburn University  
107 Sanford Hall  
Auburn University, Alabama 36849-5113

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[www.chysaas.com/mills/millspatent.htm](http://www.chysaas.com/mills/millspatent.htm)



# Auburn University

Auburn University, Alabama 36849-5338

College of Engineering

Department of Aerospace Engineering  
211 Aerospace Engineering Building

Telephone: (334) 844-4874  
FAX: (334) 844-6803

John G. Mills  
Mills Law Firm PLLC  
Triangle Office  
853-H Business Park  
Post Office Box 587  
Wake Forest, NC 27588-0587

22 September 1998

Re: patent 5,788,178

Dear Mr. Mills,

Thank you so much for sending me a copy of patent 5,788,178. It is good to see so many Barretts making it big in the field. (As you may know, one of our relatives, Ronnie Barrett, also makes the famed M-82 .50 cal. sniper rifle.)

As I'm sure you've seen through the years, the adage that "there's nothing new under the sun" often holds. When I first started working with guided bullets in 1989, we did a fairly thorough literature search and found out that General Electric had ongoing projects which dated from the late '70's (some of their "old-timers" claimed to have worked on white papers as early as '73). From the looks of these early designs, they pretty much cover much of my dear cousin's patent referenced above. (I guess you may want to get in touch with GE and see what they'll tell you -- unfortunately many of the guys have since retired.)

We published several reports through the mid-1990s on guided rounds using adaptive materials which were widely distributed in conference proceedings and open technical presentations. We filed our first invention disclosure on guided bullets in 1989. That work, along with a lot more was ultimately patented -- you may want to look at US Pat. 5,440,193 which contains designs for flight control devices for use on bullets, cannon shells, missiles and aircraft.

Our most recent work using segmented bullet and cannon shell control is, again, not new. We found several AIAA papers from the late 1960's and early '70's which were done on reentry vehicles which are very similar in configuration and function. I'm sure that if you and my cousin were to dig into the technical literature (not just the patent gazettes), you would find that there is a very large body of work that has been done on guided bullets. Till then, I will wish you luck with your endeavors and please pass on my best wishes to yet another far flung Barrett.

Sincerely,



Ron Barrett  
Assistant Professor of Aerospace Engineering and  
Director of the Adaptive Aerostructures Laboratory  
(334) 844-6825 (office) -6832 (lab) -6803 (FAX)

RMB: pdq  
enc.

AUBURN UNIVERSITY

EXHIBIT 2

March 12, 2002

Dr. Ronald M. Barrett, Ass't Prof. Aerospace Eng.  
Auburn University, Department of Aerospace Eng.  
211 Aerospace Engineering Building  
Auburn University, Alabama 36849-5338

Re: Fourth Year Maintenance Fee  
U.S. Patent No. 5,788,178  
For: GUIDED BULLET

Dear Dr. Barrett:

The 4<sup>th</sup> year Maintenance Fee, as reflected on the enclosed Memorandum Statement is now due and payable for your above indicated patent to allow the same to remain in force for four more years.

The fee must be mailed to the U.S. Patent and Trademark Office on or before August 4, 2002 or the Patent will **EXPIRE**.

As always, should there be questions, please feel free to give us a call.

With kindest regards, I remain

Sincerely,

MILLS LAW FIRM PLLC

John G. Mills

JGM:arw  
c-3360-2

EXHIBIT 3

**CARY OFFICE**  
POST OFFICE BOX 5886  
CARY, NC 27512  
TEL 919-380-9500  
FAX 919-380-9821  
mphilips@millspatentlaw.com

**MILLS LAW FIRM, PLLC**  
**PATENT LAWYERS**

822 S WHITE STREET, SUITE 100  
POST OFFICE BOX 1088  
WAKE FOREST, NC 27688-1088  
TEL 919-654-4200  
FAX 919-354-4243  
jmills@millspatentlaw.com

**EASTERN OFFICE**  
235 COMMERCE STREET  
GREENVILLE, NC 27858  
TEL 252-413-0475  
FAX 252-413-0445  
pschiffen@millspatentlaw.com

July 16, 2002

Dr. Ronald M. Barrett, Ass't Prof. Aerospace Eng.  
Auburn University, Department of Aerospace Eng.  
211 Aerospace Engineering Building  
Auburn University, Alabama 36849-5338

**CERTIFIED MAIL**

Re: Fourth Year Maintenance Fee  
U.S. Patent No. 5,788,178  
For: GUIDED BULLET

Dear Dr. Barrett:

The 4<sup>th</sup> year Maintenance Fee as reflected on the enclosed Memorandum Statement is now due and payable for your above indicated patent to allow the same to remain in force for four more years.

The fee must be mailed to the U.S. Patent and Trademark Office on or before August 4, 2002 or the *Patent will EXPIRE*.

As always, should there be questions, please feel free to give us a call.

With kindest regards, I remain

Sincerely,

**MILLS LAW FIRM PLLC**

John G. Mills

JGM:erw  
c-3360-2

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REGISTERED PATENT ATTORNEYS • UNITED STATES AND INTERNATIONAL PRACTICE  
[www.millspatentlaw.com](http://www.millspatentlaw.com)

<b>SENDER: COMPLETE THIS SECTION</b>		<b>COMPLETE THIS SECTION ON DELIVERY</b>	
<p>■ Complete Items 1, 2, and 3. Also complete Item 4 if Restricted Delivery is desired.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p>		<p>A. Received by Please Print Name <b>JUL 18 2000</b></p> <p>B. Date of Delivery</p> <p>C. Signature <i>[Signature]</i></p> <p>D. Is delivery address different from Item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If YES, enter delivery address below: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	
<p>1. Article Addressed to:</p> <p><i>Dr. Ronald M. Barrett</i>  <i>Asst. Prof. Aerospace Eng.</i>  <i>Auburn Univ. Dept Aerospace</i>  <i>211 Aerospace Eng. Bldg.</i>  <i>Auburn, Alabama 4</i>  <i>36849-5338</i></p>		<p>2. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail</p> <p><input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> G.O.D.</p>	
<p>2. Article Number (Copy from service label)</p> <p><i>7000 1670 0011 9134 69N</i></p>		<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	
<p>PS Form 3811, July 1999</p>		<p>Domestic Return Receipt <i>P-3360</i> 32593-00-01-0002</p>	

UNITED STATES POSTAL SERVICE



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|||||  
 MILLS LAW FIRM PLLC  
 P.O. BOX 1088  
 Wake Forest, NC 27588



**CARY OFFICE**  
POST OFFICE BOX 5886  
CARY, NC 27512  
TEL 919-380-9500  
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mphilips@millspatentlaw.com

**MILLS LAW FIRM, PLLC**  
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jmills@millspatentlaw.com

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235 COMMERCE STREET  
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TEL 252-413-0475  
FAX 252-413-0445  
psachljen@millspatentlaw.com

October 14, 2002

Dr. Ronald M. Barrett, Ass't Prof. Aerospace Eng.  
Auburn University, Department of Aerospace Eng.  
211 Aerospace Engineering Building  
Auburn University, Alabama 36849-5338

Re: NOTICE OF PATENT EXPIRATION  
For: GUIDED BULLET  
Patent No: 5,788,178

Dear Dr. Barrett:

We are in receipt of a Notice of Patent Expiration, a copy of which is enclosed for your records.

Should there be questions concerning this matter or if you would like to refile the case, please feel free to give me a call relative thereto.

With kindest regards, I remain

Sincerely,

**MILLS LAW FIRM PLLC**

John G. Mills

JGM:erw  
Enclosure  
c-3360-2

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[www.millspatentlaw.com](http://www.millspatentlaw.com)

Ser. No. 08/888,425  
Docket No. RBAR0001-100

PETITION UNDER  
37 C.F.R. § 1.378(b)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

<b>In re US Pat. No.:</b>	5,788,178	<b>Serial No.:</b>	08/888,425
<b>Issued:</b>	August 4, 1998	<b>Filed:</b>	July 7, 1997
<b>Patentee:</b>	Rolin F. Barrett, Jr.	<b>Docket No.:</b>	RBAR0001-100
<b>For:</b>	<b>GUIDED BULLET</b>		

**MAIL STOP PETITION**  
**Commissioner for Patents**  
**P.O. Box 1450**  
**Alexandria, VA 22313-1450**

**Declaration of Larry L. Coats**

I, Larry L. Coats, hereby declare that:

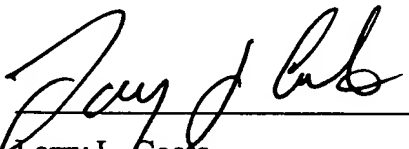
1. I am a principal in the law firm, Coats & Bennett, PLLC located in Cary, North Carolina 27502. I have been practicing patent law since 1970.
2. In November of 1998 I was hired, while a principal at the prior firm Rhodes, Coats & Bennett, by Mr. Rolin F. Barrett, Jr. to prepare, file, and prosecute a reissue application seeking broader protection based on U.S. Patent No. 5,788,178 issued to Mr. Rolin F. Barrett, Jr. on August 4, 1998 (the 178 Patent).
3. In preparation of the reissue application, we obtained a copy of the file history of the 178 Patent from the PTO records.
4. We opened a file for the reissue application and assigned an internal docket number to the matter.
5. Our firm was hired to prosecute the reissue application. The patent application that led to the '178 patent was prepared and prosecuted by The Mills Law Firm of Wake Forest, North Carolina. Our firm was never requested to obtain the '178 patent file from The Mills Law Firm, and to the best of my knowledge, The Mills Law Firm was never

requested to transfer the file to our firm or to withdraw as counsel of record in the United States Patent and Trademark Office with respect to '178 patent.

6. Our firm did not handle the maintenance fees for the '178 patent. That was done by The Mills Law Firm. The Mills Law Firm sent maintenance fee reminders intended for Mr. Barrett, but which were inadvertently sent to another individual who The Mills Law Firm had contacted with respect to the '178 patent and who by chance had the confusingly similar name of Ronald Barrett.
7. The reissue application was filed on November 4, 1999, and given serial no. 09/436,387.
8. My firm and I prosecuted the application, ultimately filing a Notice of Appeal and subsequent Appeal Brief before the Board of Patent Appeals and Interferences. There, the Board remanded the case back to the Examiner in July 2003, indicating that the case was special – requiring expedited handling.
9. After the remand by the Board, the case was sent to the Office of Legal Affairs in the patent Office. Over the next year and one-half we repeatedly called the Board and the Office of Legal Affairs because we could not understand the long delay, especially in light of the Board's stating that the case was special and required expedited handling. Individuals at the Board stated that the Board no longer had jurisdiction over the case. The Office of Legal Affairs acknowledged that it had the file and that the case was under review.
10. As of January 11, 2005, we had not received any action from the Office and Mr. Edward H. Green III of my office wrote Commissioner Godici for help in identifying and resolving the delay, since it had been nearly a year and a half since the Board remanded the case. (See Exhibit 1).
11. About the latter part of January 2005, the Examiner in charge, Examiner Bernarr Gregory, called me and indicated that the case was going to be allowed. Then a few days later, Mr. Gregory called me back again and indicated that he had determined that the '178 patent had expired for failure to pay the 4<sup>th</sup> year maintenance fee.

12. On about February 10, 2005 we received a paper from the Patent Office indicating that the '178 patent had expired due to the failure to pay the 4<sup>th</sup> year maintenance fee.
13. Examiner Gregory's telephone call was the first time I or anyone at my firm became aware that the maintenance fee for the 178 Patent had not been paid and that the 178 Patent had expired. We immediately reported this to Mr. Rolin F. Barrett, Jr. and began investigating the circumstances surrounding the failure to pay the 4<sup>th</sup> year maintenance fee.
14. Since then, we have contacted the Mills Law Firm to develop the facts and, upon Mr. Barrett's request, have forwarded the information and case to Mr. Rolin F. Barrett, Jr.'s new counsel.
15. I declare further that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further, that the statements are made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code.

6/23, 2005

  
Larry L. Coats





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UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS

4419-001

FEB 17 2005

RECEIVED  
FEB 10 2003

Mr. Edward H. Green, III  
1400 Crescent Green  
Suite 300  
Cary, NC 27511

Dear Mr. Green:

Thank you for your letter to Commissioner Godici regarding delay in processing of Reissue patent application 09/436,387. Your inquiry has been forwarded to me at the United States Patent and Trademark Office (USPTO) for response since it deals with matters associated with the patent process.

The USPTO regrets any delay you have experienced in the prosecution of this application. It is not easy to determine the precise reason for the delay in this case since our computer tracking system does not give any further indication of the nature of delay. Reissue applications are in special status and are to be acted on immediately ahead of other applications.

Bernarr Gregory, the examiner assigned to this application, recently contacted Mr. Larry Coats at your firm to notify him that parent US Patent 5,788,178, expired for failure to pay the required maintenance fee. Prosecution on the reissue has been delayed pending resolution of the status of the patent. Mr. Coats communicated to Mr. Gregory that he was going to take active measures to rectify the situation.

In the future, it would be beneficial to you to send an inquiry to the examiner in the event you experience a delay in the prosecution of a reissue application, this will give the examiner a chance to investigate any potential problem with the prosecution of the case at the earliest possible opportunity.

I hope this information has been useful. If you require further assistance specific to this letter, please contact our office at (571) 272-8800.

Sincerely,

James J. Groody  
Executive Assistant  
Office of the Commissioner for Patents

EXHIBIT 1